

REMARKS

Claims 1-26 are currently pending in the application. Claims 10-23, and 25-26 have been withdrawn from consideration by the Examiner. Claims 8 and 9 are amended. The amendments find support in the specification and are discussed in the relevant sections below. No new matter is added.

35 USC § 112 Second Paragraph

Claims 8 and 9 were rejected as being indefinite. The Office Action asserts that the recited phrase "said parent" lacks antecedent basis. In order to more clearly define Applicant's invention, Applicant has amended claims 8 and 9 by deleting the recitation of the word "parent". Accordingly, reconsideration and withdrawal of the objection is requested.

35 USC § 103 Rejection:

Claims 1-9 and 24 under 35 U.S.C. §103(a) were rejected as being obvious over Wang et al., in view of Lin et al., (1995, Science, 268: 286) and Wieder et al., U.S. Pat. No. 5,620,881 and Gopal, T.V., Molecular and Cell. Biol. 1985., Vol. 5, No. 5., pages 1188-1190.

The Office Action has applied the rejection of claims 1-9 and 24 "insofar as the claims are drawn to a cell line such as HeLa cells (or kit thereof) comprising a stably integrated recombinant nucleic acid construct comprising a reporter gene such as luciferase operably linked to the Gal4 recognition sequence for a specific DNA binding protein, and which cell line further comprises a stably integrated recombinant nucleic acid construct encoding a constitutively expressed fusion protein comprising a conditionally active transactivation domain of CHOP downstream of and linked to the Gal4 DNA binding domain, wherein binding of said fusion protein to the Gal4 recognition sequence results in transactivation and increased expression of said reporter gene when said transactivation domain of CHOP, fused to the Gal4 DNA binding domain, is activated".

Applicant traverses the rejection on the grounds that a prima facie case of obviousness under the requirements of 35 U.S.C. § 103(a) has not been established. To establish a prima

facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Applicant submits that each and every limitation of the claims is not taught or suggested by the references applied, whether applied individually or in combination. Specifically, Applicant submits that the nucleic acid construct comprising the limitation "wherein said sequence-specific DNA binding domain of said fusion protein is located upstream of said conditionally active transactivation domain of CHOP" recited in instant base claim 1, is not taught by the references applied in this rejection, whether the references are applied individually or in combination.

The Office Action states that the primary reference by "Wang et al. teach transfected mammalian cells comprising a constitutively expressed fusion construct comprising the conditionally active transactivation domain of CHOP downstream of and linked to a GAL4 DNA binding domain, and which transfected cells further comprise a reporter plasmid comprising a luciferase reporter gene operably linked to the GAL4 recognition sequence, whereby the transactivator of CHOP, following GAL4 binding to the recognition sequence, leads to increased expression of the reporter gene(luciferase) over basal or constitutive levels of expression in the mammalian host cell", underline added.

Applicants contend that Wang et al. actually teaches a construct comprising a conditionally active transactivation domain of CHOP which is upstream of and linked to a GAL4 DNA binding domain. Applicant notes that Wang et al. teach "CHOP-Gal4" expression vectors in the legend of Figure 3 on page 1348, but does not refer to the specific order of the linkage between CHOP and GAL4, other than what may be gleaned from the order of the words "CHOP" and "Gal4" in the term "CHOP-Gal4". Applicant notes that Wang et al. teach in footnote 24 on page 1349 that "The DNA-binding domain of Gal4 (amino acids 3-147) was amplified by polymerase chain reaction and ligated in frame with wild-type or mutant murine CHOP complementary DNA (cDNA) at the unique Nhe 1 site of the mutant cDNA , thus deleting the CHOP dimerization domain. The chimeric cDNA was transferred to the pCDN-Amp mammalian expression plasmid".

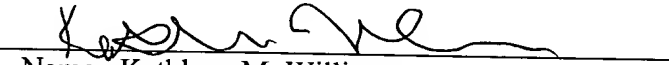
It was well known to one of skill in the art at the time the invention was made that the dimerization domain of CHOP is a leucine zipper located toward the carboxyl end of the CHOP molecule, and that the transactivation domain is located at the amino terminal end of the CHOP molecule, as evidenced by Ubeda et al. (Mol. Cell. Biol. (1999) 19:7589-7599), see entire article especially page 7594, column 1, and Figure 8 B, in the Attached appendix A. As described above, Wang et al. teaches that the chimeric fusion vector was constructed by inserting the Gal4 DNA binding domain at a restriction site at the dimerization domain of CHOP, thereby deleting the dimerization region of CHOP. Since the dimerization region of CHOP which is located 3 prime to DNA encoding the transactivational domain of CHOP, has been substituted with the Gal4 DNA binding domain, the resulting vector construct encodes a chimeric protein in which a conditionally active transactivation domain of CHOP which is upstream of and linked to a GAL4 DNA binding domain.

Wang et al. does not teach or suggest a nucleic acid construct comprising the limitation "wherein said sequence-specific DNA binding domain of said fusion protein is located upstream of said conditionally active transactivation domain of CHOP" as recited in instant base claim 1. Further, none of the secondary references teach or suggest said claim limitation, when considered individually, nor when considered in combination. Therefore, the secondary references can not make up the deficiencies of the primary reference with respect to said claim limitation. Because the prior art reference (or references when combined) do not teach or suggest all the claim limitations, a prima facie case of obviousness under the requirements of 35 U.S.C. § 103(a) has not been established. Accordingly, reconsideration and withdrawal of the objection is requested.

Applicant submits that all claims are allowable as written and respectfully request early favorable action by the Examiner. If the Examiner believes that a telephone conversation with Applicant's attorney/agent would expedite prosecution of this application, the Examiner is cordially invited to call the undersigned attorney/agent of record.

Respectfully submitted,

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Name: Kathleen M. Williams
Registration No.: 34,380
Customer No.: 27495
Palmer & Dodge LLP
111 Huntington Avenue
Boston, MA 02199-7613
Tel. (617) 239-0100